

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HORATIO DE MARIOUS SMITH,

Plaintiff,

vs.

DANIELLE DETWILER, et al.,

Defendants.

03:04-CV-0667-LRH (RAM)

ORDER

Before this court is the Report and Recommendation of United States Magistrate Judge Robert A. McQuaid, Jr. (#50¹) entered on January 5, 2006. The Magistrate Judge recommends this court grant Defendants' Motion to Dismiss (#28). Plaintiff, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 1B 3-2, filed objections to the Magistrate Judge's Report and Recommendation (#52) on January 19, 2006. Defendants have filed an opposition (#53) to which Plaintiff has replied (#54).

The Court has conducted its *de novo* review in this case and has fully considered Plaintiff's objections, the pleadings and memoranda of the parties and other relevant matters of record. The Court determines that the Magistrate Judge's Report and Recommendation, recommending that Plaintiff's claim be dismissed on the ground of *res judicata*, should be adopted and accepted.

Plaintiff objects to dismissal of his complaint on the ground that he had never properly joined the current parties in his previous lawsuit, therefore precluding a judgment on the merits

¹ References to (#XX) refer to the court's docket.

1 in the previous case because dismissal was necessarily pursuant to Rule 19. However, Plaintiff
2 did not need to follow Rule 19 to advance a claim against the current defendants as he was given
3 an opportunity to and did file a Sixth Amended Complaint(#28, Ex. A) in which he named the
4 current defendants. The dismissal in that matter, as made clear by the report and
5 recommendation which formed the basis for dismissal (#28, Ex. C), was not based on Plaintiff's
6 failure to join a party, but rather on Plaintiff's failure to state a claim upon which relief could be
7 granted pursuant to Rule 12(b)(6). Plaintiff also objects that he did not raise an Eighth
8 Amendment claim in his previous lawsuit. A reading of the complaint (#28, Ex. A) in that
9 matter and the order dismissing Plaintiff's claims (#28, Ex. C) clearly shows a different story.
10 The Magistrate Judge was not incorrect in determining that the doctrine of *res judicata* applies in
11 this instance.

12 It is therefore ORDERED that the Magistrate Judge's Report and Recommendation (#50)
13 is adopted and accepted. Defendants' Motion to Dismiss (#28) is GRANTED.

14 The Clerk shall enter judgment accordingly.

15 DATED this 5th day of June, 2006.



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19 LARRY R. HICKS
United States District Judge